

## Message Text

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ORIGIN EUR-12

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DRAFTED BY EUR;SOV;LWILLEMS:L/EUR:JWILLIS:REH  
APPROVED BY EUR:SOV:SMCCALL  
IO/UNP - LHAGE

-----107180 080323Z /14

P R 080023Z JUN 78  
FM SECSTATE WASHDC  
TO AMEMBASSY MOSCOW PRIORITY  
INFO AMCONSUL LENINGRAD  
USMISSION USUN NEW YORK

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E.O. 11652: N/A

TAGS: PDIP, CGEN

SUBJECT: SOVEREIGN IMMUNITY - MALIK ACCIDENT CLAIM

REF: A. USUN 2201, B. STATE 133910

1. SOVIET CONSUL MALNEV MET JUNE 7 WITH WILLIS, L/EUR, AND EUR/SOV OFFICERS TO DISCUSS US RESPONSE TO SMUN'S NOTE ABOUT CLAIM ARISING FROM MALIK ACCIDENT. WILLIS MADE POINTS OUTLINED REF B. MALNEV ASKED WHETHER DEPARTMENT'S RESPONSE MEANT THAT DEPARTMENT WAS SUGGESTING SOVIETS SHOULD EXPEND THEIR TIME AND MONEY TO RETAIN AMERICAN ATTORNEY TO ESTABLISH SMUN'S SOVEREIGN IMMUNITY TO THE COURT. DEPTOFFS EXPLAINED THAT, IRRESPECTIVE OF THE MERITS OF THE CASE, OR OF ANY DEFENSE, DEPARTMENT COULD NOT MAKE REPRESENTATIONS TO THE COURT.

2. MALNEV SAID THAT US WAS PUTTING ITS DOMESTIC LAW AHEAD  
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OF ITS INTERNATIONAL OBLIGATIONS. WILLIS ASKED WHAT SOVIETS DO IN OTHER WESTERN COUNTRIES IN WHICH COURTS MAKE DETERMINATIONS OF SOVEREIGN IMMUNITY, AND MALNEV SAID HE DID NOT KNOW.

3. MALNEV SAID SOVIET GOVERNMENT IS MORE CONCERNED WITH PRECEDENT OF DEALING WITH COURT THAN WITH THE MERITS OF THE

IMMEDIATE CASE AT HAND. HE SAID THAT IN HIS PERSONAL  
OPINION SOVIET GOVERNMENT SHOULD REFUSE TO RETAIN ATTORNEY  
OR DEAL WITH COURT, AND HE ASKED WILLIS WHAT WOULD HAPPEN  
IN SUCH CIRCUMSTANCES. WILLIS SAID A JUDGMENT MIGHT  
BE MADE IN DEFAULT IF DEFENDANTS FAIL TO APPEAR. MALNEV  
ASKED WHETHER THE COURT WOULD SIEZE SMUN PROPERTY TO  
ENFORCE SUCH A JUDGMENT, AND WILLIS REPLIED THAT THE  
PROPERTY OF A FOREIGN STATE WOULD GENERALLY BE IMMUNE  
FROM ATTACHMENT. SHE SAID THAT ANY JUDGMENT WHICH COULD  
NOT BE ENFORCED BECAUSE OF IMMUNITY WOULD THEN BECOME A  
MATTER TO BE RESOLVED IN DIPLOMATIC CHANNELS. MALNEV  
COMMENTED THAT IT WOULD BE BETTER TO RESOLVE CASE AT THE  
BEGINNING THROUGH DIPLOMATIC MEANS RATHER THAN AFTER  
JUDGMENT.

4. MALNEV COMMENTED THAT PERHAPS SOVIET GOVERNMENT WOULD  
HAVE TO SET UP SPECIAL COURT AND PROCEDURES TO ACCORD  
RECIPROCAL TREATMENT ON US EMBASSY IN MOSCOW. HE  
COMMENTED WITH GOOD HUMOR THAT SOVIET GOVERNMENT CAN

CHANGE ITS LEGAL SYSTEM MUCH MORE EASILY AND READILY THAN  
AMERICAN GOVERNMENT CAN CHANGE US SYSTEM, AND DEPTOFFS  
ACKNOWLEDGED THAT WAS TRUE. VANCE

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## Message Attributes

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**Concepts:** DIPLOMATIC PRIVILEGES, ACCIDENTS  
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**Decaption Date:** 01 jan 1960  
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**Disposition Approved on Date:**  
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**Disposition Comment:** 25 YEAR REVIEW  
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**Enclosure:** n/a  
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**Review Markings:**  
Sheryl P. Walter  
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